PRODUCT LIABILITY/Obstetric Liability Limit in Certain Cases

SUBJECT: **Product Liability Fairness Act . . . H.R. 956. Rockefeller motion to table the Thomas amendment No. 604 to the McConnell amendment No. 603 to the Gorton substitute amendment No. 596.**

ACTION: MOTION TO TABLE FAILED, 39-61

SYNOPSIS: As passed by the House, H.R. 956, the Product Liability Fairness Act, will establish uniform Federal and State civil litigation standards for product liability cases and other civil cases, including medical malpractice actions.

The Gorton substitute amendment would apply only to Federal and State civil product liability cases. It would abolish the doctrine of joint liability for noneconomic damages, would create a consistent standard for the award of punitive damages, and would limit punitive damage awards.

The McConnell amendment would reform Federal and State medical malpractice laws by eliminating joint liability for noneconomic and punitive damages, capping punitive damages at the greater of $250,000 or 3 times economic losses, creating a 2-year statute of limitations starting from the time of discovery of an injury, allowing for periodic payment of awards over $100,000, requiring the reduction of awards by the amount of compensation received from collateral sources, limiting attorney contingency fees to of the first $150,000 recovered and of any additional amount recovered, and encouraging States to adopt alternative dispute resolution mechanisms.

The Thomas amendment to the McConnell amendment would not allow malpractice damages relating to the labor or delivery of a baby to be assessed against a health care provider without clear and convincing evidence of malpractice if that provider had not provided prenatal care to the claimant. This provision would not apply to a provider who was a member of a medical group that provided prenatal care for a claimant.

Debate was limited by unanimous consent. Following debate, Senator Rockefeller moved to table the Thomas amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

NOTE: Following the failure of the motion to table, the Thomas amendment was adopted by voice vote.

(See other side)

YEAS (39)

Republicans (10 or 19%)	Democrats (29 or 63%)	
Cohen	Akaka	Inouye
D'Amato	Biden	Kennedy
DeWine	Bingaman	Kerry
Gorton	Boxer	Kohl
Jeffords	Bradley	Lautenberg
Kassebaum	Breaux	Levin
Packwood	Bumpers	Moseley-Braun
Snowe	Daschle	Moynihan
Specter	Dodd	Murray
Thompson	Feingold	Pell
	Glenn	Robb
	Harkin	Rockefeller
	Heflin	Sarbanes
	Hollings	Simon
		Wellstone

NAYS (61)

Republicans (44 or 81%)		Democrats (17 or 37%)
Abraham	Helms	Baucus
Ashcroft	Hutchison	Bryan
Bennett	Inhofe	Byrd
Bond	Kempthorne	Conrad
Brown	Kyl	Dorgan
Burns	Lott	Exon
Campbell	Lugar	Feinstein
Chafee	Mack	Ford
Coats	McCain	Graham
Cochran	McConnell	Johnston
Coverdell	Murkowski	Kerrey
Craig	Nickles	Leahy
Dole	Pressler	Lieberman
Domenici	Roth	Mikulski
Faircloth	Santorum	Nunn
Frist	Shelby	Pryor
Gramm	Simpson	Reid
Grams	Smith	
Grassley	Stevens	
Gregg	Thomas	
Hatch	Thurmond	
Hatfield	Warner	

NOT VOTING (0)

Republicans (0)	Democrats (0)

EXPLANATION OF ABSENCE:
1—Official Buisiness
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

Those favoring the motion to table contended:

We do not believe this proposal has been carefully thought out. Senators tell us they have offered it to shield rural obstetricians from medical malpractice lawsuits, yet its wording clearly indicates that it will apply to every obstetrician in America. Thus, a doctor in Boston could deliver babies without fear of suit, as long as he made sure that he was cavalier enough in his treatment not to have provided any prior prenatal care for those babies. Ordinarily one would want a doctor delivering a baby to have made sure that proper care had been given in the preceding 9 months, but this amendment would encourage doctors to avoid such care in order to avoid lawsuits. We imagine many unscrupulous, careless doctors would be quick to exploit this exemption from our medical malpractice laws. Further, we are surprised that many of the Senators who so often champion States' rights are in this case willing to take away from States the right to devise their own medical malpractice systems. In our opinion, the States do not need this Federal interference. Clearly this idea needs more careful thought before we enact it, whether it applies to Boston, Massachusetts, or Cheyenne, Wyoming. The Thomas amendment should therefore be tabled.

Those opposing the motion to table contended:

The Thomas amendment is intended to address a problem faced by women in rural and frontier America. Sparsely populated areas have few doctors, and women must consequently travel great distances to receive medical care. In frontier areas, it is common to have to travel hundreds of miles. When women go into labor, they frequently do not have time to reach their health care providers who have been providing prenatal care. Doctors who may be nearby are reluctant to deliver these women's babies because doing so would open them up to lawsuits for complications from medical conditions of which they were unaware. Other women, because of the distances involved, often do not receive any prenatal care, and consequently have even greater difficulty in finding doctors to deliver their babies.

The costs of labor and delivery lawsuits have skyrocketed in recent years in America, with the problem being the greatest in rural areas with less prenatal care. In Wyoming, for example, one provider has seen his annual insurance premiums rise from $4,000 in 1978 to $35,000 in 1995. This practitioner is still fortunate in that his premium is less than the State average of $42,000. That State average is from a small group--largely because of the high malpractice liability costs, Wyoming has only 25 OB/GYN providers left delivering babies. Senators can talk all they want about the right to sue, but if that right is so extreme that it drives all the doctors out of business it is a right we can do without.

The Thomas amendment, though, would not do away with the right to sue; all it would require is a higher evidentiary standard in those instances in which doctors deliver babies for whom they have not provided prenatal care. If there were clear and convincing evidence of malpractice, those doctors could still be held liable. It is a moderate amendment intended to entice doctors back into an area of health care that they have been fleeing, to the detriment of women and their children.

Our primary intent in offering this amendment is to protect women in rural and frontier communities, but it would be beneficial to women all over America. Though the problem is usually not as extreme in more populous areas of the country (with some exceptions in urban areas), we know that it does exist. Accordingly, we drafted the Thomas amendment to cover all of America. Some Senators from populous States objected to this blanket coverage. In the interest of comity, we suggested that we would be willing to remove their objection by modifying the amendment to have it apply only to our less populated States. Our colleagues oddly rejected this suggestion.

Another objection that has been raised to the Thomas amendment is that it has not been given careful study. This objection is simply false. It was offered and debated last year as part of several health care proposals. For example, it was part of the Cooper health care reform bill, and it was part of the Dole health care proposal.

The final objection that has been raised is that the amendment would infringe on States' rights. Frankly, we do not believe our colleagues are really concerned about States' rights. The very Senators who are suddenly professing such concerns for the rights of States last year were proud supporters of numerous plans to impose rigid, national socialized medicine proposals on the country. The States' rights argument is a red herring argument by Senators who are really concerned with protecting the profits of their trial lawyer supporters, who are the sole beneficiaries of the current medical malpractice system.

Families, we hope, are not about to stop having babies. Given this fact, we ought to ensure that we have doctors to deliver those babies. Our current medical malpractice liability system is driving such doctors out of business. The Thomas amendment would stem this tide, and thus deserves our strong support.